

1 COOLEY GODWARD KRONISH LLP  
 2 MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)  
 3 LEO P. NORTON (216282) (lnorton@cooley.com)  
 4 4401 Eastgate Mall  
 5 San Diego, CA 92121  
 6 Telephone: (858) 550-6000  
 7 Facsimile: (858) 550-6420

8 Attorneys for Defendant  
 9 GOOGLE INC.<sup>1</sup>

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 11  
 12 UNITED STATES DISTRICT COURT  
 13 NORTHERN DISTRICT OF CALIFORNIA  
 14 SAN JOSE DIVISION

15 DAVID ALMEIDA, individually and on  
 16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 GOOGLE, INC. a Delaware Corporation; and  
 20 DOES 1 through 10, inclusive,

21 Defendants.

22 Case No. 08-cv-02088 RMW (PVT)

23 **ADMINISTRATIVE MOTION TO  
 24 CONSIDER WHETHER PUTATIVE  
 25 CLASS ACTION CASES AGAINST  
 26 GOOGLE INC. REGARDING  
 27 ADWORDS ADVERTISING  
 28 PROGRAM SHOULD BE RELATED  
 (Civil L.R. 3-12 & 7-11)**

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1      **I. INTRODUCTION**

2      Pursuant to Civil Local Rules 3-12 and 7-11, Defendant Google Inc. (“Google”)  
 3      respectfully requests that this action be related to three later-filed, substantially similar putative  
 4      class actions against Google recently filed in this district that, like this action, concern Google’s  
 5      AdWords advertising program. The four related putative class actions are:

6      • *David Almeida v. Google, Inc.*, Case No. C 08-02088-RMW (“*Almeida* case”);  
 7      • *Hal K. Levitte v. Google, Inc.*, Case No. C 08-03369-JW (“*Levitte* case”);  
 8      • *RK West, Inc. v. Google, Inc.*, Case No. C 08-03452-RMW (“*RK West* case”); and  
 9      • *Pulaski & Middleman, LLC v. Google Inc.*, Case No. C 08-03888-SI (“*Pulaski* case”).<sup>2</sup>

10     These four putative class actions are related because they concern substantially the same parties  
 11    as well as substantially the same transactions or events and there is the potential for unduly  
 12    burdensome duplication and conflicting results if not related. Judicial and party economy and the  
 13    Civil Local Rules dictate that the cases should be related and that the cases not already assigned  
 14    to the Honorable Ronald M. Whyte—the *Levitte* and *Pulaski* cases—should be reassigned to him.

15     **II. THE FOUR GOOGLE ADWORDS PUTATIVE CLASS ACTIONS ARE RELATED**

16     Civil Local Rule 3-12 states that actions are related when “[t]he actions concern  
 17    substantially the same parties, property, transaction or event” and “[i]t appears likely that there  
 18    will be an unduly burdensome duplication of labor and expense or conflicting results if the cases  
 19    are conducted before different Judges.” Civil L.R. 3-12(a). Here, the four Google AdWords  
 20    putative class actions easily satisfy the definition for related cases.

21     **A. Substantially the Same Parties.**

22     Google is the sole named defendant in all four putative class actions, and therefore the  
 23    cases concern the same defendant. Norton Declaration, Exhibits 1-4.

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 25     <sup>2</sup> A copy of the *Almeida* case Complaint is attached as Exhibit 1 to the Declaration of Leo P.  
 26    Norton in Support of Administrative Motion to Consider Whether Putative Class Action Cases  
 27    Against Google Inc. Regarding AdWords Advertising Program Should Be Related (“Norton  
 28    Declaration”). A copy of the *Levitte* case Complaint is attached as Exhibit 2 to the Norton  
 Declaration. A copy of the *RK West* case Complaint is attached as Exhibit 3 to the Norton  
 Declaration. A copy of the *Pulaski* case complaint is attached as Exhibit 4 to the Norton  
 Declaration.

1 Also, the four putative class actions assert similar or overlapping classes of plaintiffs:

- 2 • *Almeida* case: “All persons or entities located within the United States who bid on a  
3 keyword though [sic] AdWords, left the ‘CPC content bid’ input blank, and were  
4 charged for content ads.” *Almeida* case Complaint, ¶ 13 (italics omitted);
- 5 • *Levitte* case: “All persons or entities located within the United States who, within four  
6 years of the filing of this complaint, had an AdWords account with Google and who  
7 were charged for advertisements appearing on parked domain and/or error page  
8 websites.” *Levitte* case Complaint, ¶ 42;
- 9 • *RK West* case: “All persons or entities located within the United States who created an  
10 AdWords campaign and were subsequently charged for clicks from ads placed on  
11 parked domains.” *RK West* case Complaint, ¶ 1 (italics omitted); and
- 12 • *Pulaski* case: “All persons or entities located within the United States who, within  
13 four years preceding the filing of this Complaint, contracted for and participated in  
14 Google’s AdWords program.” *Pulaski* case Complaint, ¶ 115.

15 Because each case asserts a putative class of Google AdWords customers, the putative classes  
16 overlap or are completely encompassed by one another.<sup>3</sup> Accordingly, the cases also concern  
17 substantially the same putative plaintiffs.

18 **B. Substantially the Same Transactions or Events.**

19 All four putative class actions arise from and relate to the named plaintiffs’ and putative  
20 class members’ contractual relationship with Google for Google’s AdWords advertising program:

- 21 • *Almeida* case: “This action arises from Google’s deceptive, fraudulent and unfair  
22 practice of tricking advertisers who seek on-line advertising through Google’s  
23 AdWords program into bidding for a service that they do not want.” *Almeida* case  
24 Complaint, ¶ 2;
- 25 • *Levitte* case: “This is a class action against defendant Google, Inc. (‘Google’) for

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26 <sup>3</sup> For example, a putative class member in the *Almeida* case would also be in the *Pulaski* case  
27 putative class, which is broadly defined to include *all* AdWords customers, and might also be in  
28 both the *Levitte* case and *RK West* case putative classes if charged for an advertisement appearing  
on a parked domain webpage.

1 violation of Business & Professions Code Section 17200 and 17500 and unjust  
 2 enrichment in connection with Google's AdWords program for Internet advertisers.  
 3 Plaintiff alleges that Google has concealed from and/or misrepresented material  
 4 information to plaintiff and the class concerning the Google AdWords program.”  
 5 *Levitte* case Complaint, ¶ 1;

6 • *RK West* case: “This action arises from Google's deceptive, fraudulent and unfair  
 7 practice of hiding the sources of invalid clicks from advertisers who seek on-line  
 8 advertising through Google's AdWords.” *RK West* case Complaint, ¶ 2; and  
 9 • *Pulaski* case: “This case is about Defendant Google's fraudulent, unfair and deceptive  
 10 business practices in connection with its AdWords advertising program ('AdWords').”  
 11 *Pulaski* case Complaint, ¶ 1.

12 Although the *Almeida* case challenges alleged charges for clicks occurring on the content network  
 13 when the “CPC input” is left blank, while the *Levitte*, *RK West*, and *Pulaski* cases challenge  
 14 alleged charges for clicks for advertisements placed on parked domain or error page websites,  
 15 each of the cases arise from and involve the same subject matter—Google's AdWords advertising  
 16 program. All the actions involve and require an understanding of Google's advertising program,  
 17 Google's contractual relationship with the named plaintiffs and putative class members,  
 18 AdWords, the AdWords bidding process, the way advertisements are displayed and where they  
 19 are displayed, and the fees that Google charges and how those fees are charged. *Compare* Norton  
 20 Declaration, Exhibits 1-4, generally. Additionally, all the actions assert claims based on the same  
 21 legal theories of unjust enrichment and alleged violation of California Business and Professions  
 22 code section 17200 arising from the Google AdWords advertising program. *Almeida* case  
 23 Complaint, ¶¶ 22-26, 34-43; *Levitte* case Complaint, ¶¶ 54-78, 86-91; *RK West* case Complaint,  
 24 ¶¶ 25-29, 37-46; *Pulaski* case Complaint, ¶¶ 140-165, 172-177.

25 The four Google AdWords putative class actions are also related because they concern  
 26 substantially the same transactions or events.

1                   **C. Potential for Unduly Burdensome Duplication of Labor and Expense and**  
 2                   **Potential for Conflicting Rulings.**

3                   If the four Google AdWords class actions are not related, and are instead conducted before  
 4                   three different judges, the actions will potentially result in unduly burdensome duplication of  
 5                   labor and cause Google great expense. Three different judges would be tasked with resolving the  
 6                   same or similar issues relating to the pleadings, discovery, class certification, dispositive motions,  
 7                   and trial. Moreover, Google would be subjected to significant defense costs four times over,  
 8                   including, but not limited to, in potentially filing motions attacking the pleadings or for summary  
 9                   judgment, opposing class certification, propounding and responding to duplicative discovery, and  
 10                   at trial. Because all the cases arise from Google's AdWords advertising program, discovery in  
 11                   the four cases will likely involve overlapping witnesses and documents. Also, as the cases are all  
 12                   putative class actions involving substantially the same subject matter, the potential exists for  
 13                   conflicting rulings on, at a minimum, class certification. Transferring cases that concern  
 14                   substantially the same subject matter or that involve overlapping putative classes to a single judge  
 15                   is well recognized to result in judicial and party economy and to ensure consistent rulings. *See, In*  
 16                   *re Prempro Prods. Liab. Litig.*, 254 F. Supp. 2d 1366, 1367 (J.P.M.L. 2003); *In re Res.*  
 17                   *Exploration, Inc. Sec. Litig.*, 483 F. Supp. 817, 821 (J.P.M.L. 1980); *In re Plumbing Fixtures*,  
 18                   308 F. Supp. 242, 244 (J.P.M.L. 1970). The four Google AdWords putative class actions should  
 19                   be related to avoid unduly burdensome duplication and conflicting rulings.

20                   **D. The Plaintiffs' Anticipated Opposition To This Motion Should Be Rejected.**

21                   Based on the *RK West* case plaintiff's counsel's preemptive conduct in filing its own  
 22                   improper administrative motion to relate all but the *Almeida* case before Judge Ware<sup>4</sup> and on

23                   

---

  
 24                   <sup>4</sup> On August 25, 2008, Google's counsel sent all plaintiffs' counsel a meet and confer letter  
 25                   attempting to reach a stipulation that the cases at issue in this motion are related as required under  
 26                   Civil Local Rule 7-11. Norton Declaration, Exhibit 5. The *Levitte* case plaintiff's counsel,  
 27                   purportedly on behalf of all plaintiffs, requested a one-week extension to respond to September 3,  
 28                   2008, and then later that day stated they would respond by Thursday, August 28. Norton  
 Declaration, Exhibit 6. Having not yet received a response the morning of Tuesday, September 2,  
 Google's counsel again demanded a response. Norton Declaration, Exhibit 7. Later that day,  
 Google's counsel received by mail the *RK West* case plaintiff's improper administrative motion to  
 relate the cases except for the *Almeida* case, and learned by examining the docket that the motion

1 communications with other plaintiffs' counsel, Google anticipates that all plaintiffs will oppose  
 2 this motion on the grounds that the *Almeida* case is different because it challenges a different  
 3 aspect of the Google AdWords program. Plaintiffs' argument should be rejected if made because  
 4 the *Almeida* case is *substantially similar*, which is all that is required. There is no requirement  
 5 that the cases be identical. Also, plaintiffs overlook that there is the potential for unduly  
 6 burdensome duplication or conflicting results.

7 The *Almeida* case, like the *Levitte*, *RK West*, and *Pulaski* cases, asserts claims against  
 8 Google based on alleged issues with Google's AdWords advertising program. The claims are  
 9 based on the same legal theories—unjust enrichment and California Business and Professions  
 10 Code section 17200. The cases involve overlapping putative class of Google AdWords  
 11 customers. The only difference between the cases is the aspect of the AdWords advertising  
 12 program being challenged. But that difference is insubstantial, and does not avoid the potential  
 13 for unduly burdensome duplication of labor and expense in document and deposition discovery  
 14 directed at Google's AdWords advertising program and the contracts that govern that program or  
 15 conflicting results regarding at a minimum class certification.

16 **III. CONCLUSION**

17 The four putative class actions against Google relating to its AdWords advertising  
 18 program are related. Consequently, Google respectfully requests that the four actions be related  
 19 before the Honorable Ronald M. Whyte.

20 Dated: September 4, 2008

COOLEY GODWARD KRONISH LLP  
 MICHAEL G. RHODES (116127)  
 LEO P. NORTON (216282)

22

23 By: \_\_\_\_\_/s/Leo P. Norton  
 24 Leo P. Norton

25 Attorneys for Defendant GOOGLE INC.

26 had actually been filed in the *RK West* case on Friday, August 29. The motion is improper for  
 27 several reasons as fully set forth in Google's opposition to that motion. Google's opposition to  
 28 that administrative motion and the declaration in support thereof is incorporated by reference as  
 though fully set forth herein. A copy of the opposition is attached as Exhibit 8 and a copy of the  
 declaration in support thereof is attached as Exhibit 9 to the Norton Declaration.

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 4, 2008, I electronically filed the foregoing **ADMINISTRATIVE MOTION TO CONSIDER WHETHER PUTATIVE CLASS ACTION CASES AGAINST GOOGLE INC. REGARDING ADWORDS ADVERTISING PROGRAM SHOULD BE RELATED** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record at the following listed email addresses.

- **Alyse Deborah Bertenthal**  
abertenthal@kvn.com,efiling@kvn.com,kxs@kvn.com
- **Daralyn J. Durie**  
ddurie@kvn.com,efiling@kvn.com,smitra@kvn.com,sbrock@kvn.com,dmiller@kvn.com
- **Brian S. Kabateck**  
bsk@kbklawyers.com
- **Ryan Marshall Kent**  
rkent@kvn.com,mcanales@kvn.com,efiling@kvn.com
- **David Jason Silbert**  
djs@kvn.com,efiling@kvn.com,aap@kvn.com
- **Alfredo Torrijos**  
at@kbklawyers.com,icd@kbklawyers.com

I also hereby certify that I caused the foregoing document to be personally delivered by consigning the document(s) to an authorized courier and/or process server for hand delivery on this 4th day of September, 2008 to the following listed addresses.

1 Guido Saveri  
 2 R. Alexander Saveri  
 3 Cadio Zirpoli  
 4 Saveri & Saveri Inc.  
 5 111 Pine Street  
 6 Suite 1700  
 7 San Francisco , CA 94111

**5 Attorneys for Plaintiff Pulaski & Middleman,  
 6 LLC**

7 Brian S. Kabateck  
 8 Richard L Kellner  
 9 Alfredo Torrijos  
 10 Kabateck Brown Kellner, LLP  
 11 644 S. Figueroa Street  
 12 Los Angeles , CA 90017

**10 Attorneys for Plaintiff RK West, Inc.**

**11 Attorneys for Plaintiff David Almeida**

12 Robert C. Schubert  
 13 Willem F. Jonckheer  
 14 Kimberly Ann Kralowec  
 15 Schubert Jonckheer Kolbe & Kralowec LLP  
 16 Three Embarcadero Center  
 17 Suite 1650  
 18 San Francisco , CA 94111

**17 Attorneys for Plaintiff Hal K. Levitte**

19 Hon. Ronald M. Whyte  
 20 United States District Court  
 21 Northern District of California  
 22 280 South 1st Street  
 23 Courtroom 6, 4th Floor  
 24 San Jose, CA 95113

**22 COURTESY COPY**

**23 RK West, Inc., Case No. 08-cv-03452**

28 600801 /SD

Terry Gross  
 Adam C. Belsky  
 Monique Alonso  
 Gross Belsky Alonso LLP  
 180 Montgomery Street  
 Suite 2200  
 San Francisco , CA 94104

**5 Attorneys for Plaintiff Pulaski & Middleman,  
 6 LLC**

Erik Swen Syverson  
 Pick & Boydston, LLP  
 1000 Wilshire Boulevard  
 Suite 600  
 Los Angeles , CA 90017

**5 Attorneys for Plaintiff RK West, Inc.**

**5 Attorneys for Plaintiff David Almeida**

Hon. Susan Illston  
 United States District Court  
 Northern District of California  
 450 Golden Gate Ave.  
 Courtroom 10, 19th Floor  
 San Francisco, CA 94102

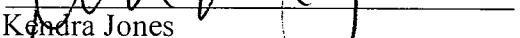
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**Pulaski & Middleman, LLC v. Google Inc.,  
 Case No. 08-cv-03888**

Hon. James Ware  
 United States District Court  
 Northern District of California  
 280 South 1st Street  
 Courtroom 8, 4th Floor  
 San Jose, CA 95113

**COURTESY COPY**

**Hal K. Levitte, Case No. 08-cv-03369**

  
 Kendra Jones  
 COOLEY GODWARD KRONISH LLP  
 4401 Eastgate Mall  
 San Diego, CA 92121-1909  
 Telephone: (858) 550-6000  
 FAX: (858) 550-6420  
 Email: kjones@cooley.com